

pay same, will arrest operation of statute. There must be an express promise to pay after statute has become a bar. *Brooks v. Preston*, 106 Md. 706; *St. Mark's Church v. Miller*, 99 Md. 26; *Wright v. Gilbert*, 51 Md. 156; *Leonard v. Hughlett*, 41 Md. 387; *Felty v. Young*, 18 Md. 167; *Young v. Mackall*, 3 Md. Ch. 398; *Carroll v. Waring*, 3 G. & J. 503; *Willard v. Wood*, 164 U. S. 522. And see *Post v. Mackall*, 3 Bl. 520.

Where a new promise revives a specialty barred by statute, suit must be upon new promise. *Felty v. Young*, 18 Md. 167; *Young v. Mackall*, 4 Md. 367; *Veasey v. Bassett*, 7 H. & J. 461.

The action upon the new promise is itself barred after three years. *Young v. Mackall*, 4 Md. 372; *Young v. Mackall*, 3 Md. Ch. 398.

#### Limitations in equity.

Equity follows the law and acts in obedience to this section. *Knight v. Brawner*, 14 Md. 7; *Hagerty v. Mann*, 56 Md. 526; *Weaver v. Leiman*, 52 Md. 714; *Insolvent Estate of Leiman*, 32 Md. 240; *Mitchell v. Mitchell*, 21 Md. 590; *Young v. Mackall*, 3 Md. Ch. 398; *McDowell v. Goldsmith*, 2 Md. Ch. 390; *Watkins v. Harwood*, 2 G. & J. 310.

As to limitations in equity, see also notes to sec. 1.

#### Mortgages.

While mortgage notes are barred after three years, the covenant in a mortgage is only barred after twelve years. *Earnshaw v. Stewart*, 64 Md. 516.

A defectively executed and unrecorded mortgage, prevents the operation of the statute within twelve years. *Nelson v. Hagerstown Bank*, 27 Md. 75.

This section is not applicable to an equitable lien such as a mortgage which can only be barred by a lapse of twenty years. *B. & O. R. R. Co. v. Trimble*, 51 Md. 109; *Lingan v. Henderson*, 1 Bl. 281. See also *Moreton v. Harrison*, 1 Bl. 491; *Ohio Life Ins. Co. v. Winn*, 4 Md. Ch. 254.

#### Generally.

This section has no application to actions for restoration of money paid under Secs. 1002-1006 of Art. 4 of the Code of Public Local Laws (1938 Edition) for use of public schools of Baltimore City. *Labanowski v. Baltimore*, 168 Md. 127.

Assignment of a legacy as security for notes not within purview of statute; limitations operate to bar remedy only and not to extinguish the right, so title might be held until debt was paid. *Miller v. Horowitz*, 172 Md. 419.

This section complied with in prosecuting claim under Art. 43, Sec. 63. (Judge Dickerson, Baltimore City Court) *Baltimore v. Webb*, Daily Record, Nov. 15, 1939.

Liability of stockholders of bank, under Art. 11, Sec. 97, held to be specialty under this section. *Sterling v. Beecher*, Daily Record, June 8, 1939.

Cited in *Jones v. Burgess*, 176 Md. 277.

Contract of parent company guaranteeing contract of subsidiary to purchase oil from plaintiff was "specialty" and action not barred by statute where parent's corporate seal was affixed. *Gen. Petroleum Corp. v. Seaboard Terminals Co.*, 23 F. Supp. 137.

Md. judicial decisions defining term "specialty" required to be taken by Federal District Court as construction of Md. statute of limitations containing said term but not defining it. *General Petroleum Corp. v. Seaboard Terminal Corp.*, 19 F. Supp. 882.

Award of Industrial Accident Commission is not a judgment, but a specialty and not barred by limitation if suit thereon is instituted within 12 years from date of award. *Mattare v. Cunningham*, 148 Md. 314.

That breach of contract under seal continued over five years before bill filled to enjoin further breaches, does not support demurrer on ground of laches, plaintiff's right under contract being legal. Covenantor's obligation was continuous throughout entire period. *Kaliopulus v. Lumm*, 155 Md. 40.

Execution of negotiable instrument with seal would continue to make twelve years period of limitations applicable. See notes to art. 13, sec. 47. *Citizens' Natl. Bank v. Custis*, 153 Md. 241.

This section referred to in holding a cause of action to be based upon a deed. *Ewell v. Weagley*, 13 F. (2nd), (C. C. A. 4th), 714.

Where decree for divorce required certain monthly payments during life or until remarriage, sums which became payable more than 12 years before filing petition for enforcement cannot be recovered. *Marshall v. Marshall*, 164 Md. 114.

Limitations do not begin to run against remaindermen until life tenant's death as regards claim against surety on trustee's bond. *Fid. & Dep. Co. v. State*, 164 Md. 315.

Suit for refund of taxes erroneously paid cannot be brought as a specialty under this section within 12 years. *Baltimore v. Household Finance Corp.*, 168 Md. 14.

Where part of mortgaged farm was sold to third party in consideration of a second mortgage and assumption of original mortgage debt, held original mortgagors and third party were not joint obligors and payment of interest by third party would not keep alive mortgage debt against original mortgagors. *County Trust Co. v. Harrington*, 168 Md. 101.